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ELVILLE WESTON FULLER, 1833-1910

BY

CHARLES D. WALCOTT

Secretary of the Smithsonian Institution

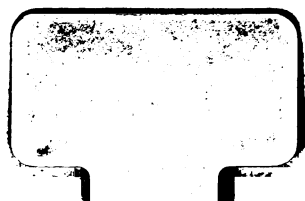
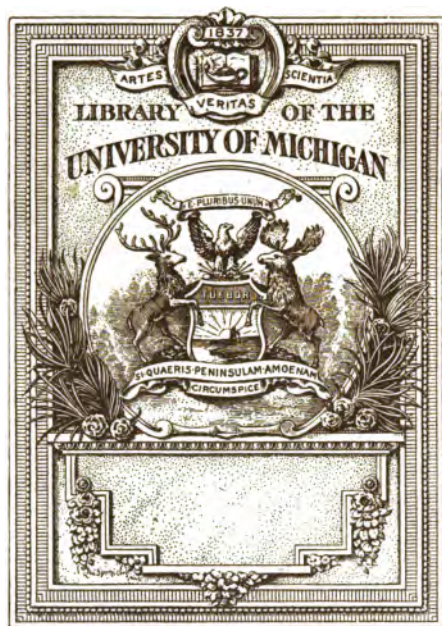
FROM THE SMITHSONIAN REPORT FOR 1910, PAGES 113-123
(WITH PLATE 1)



(PUBLICATION 2010)

WASHINGTON
GOVERNMENT PRINTING OFFICE

1911



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MELVILLE WESTON FULLER, 1833-1910²⁹⁸

BY

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CHARLES D. WALCOTT

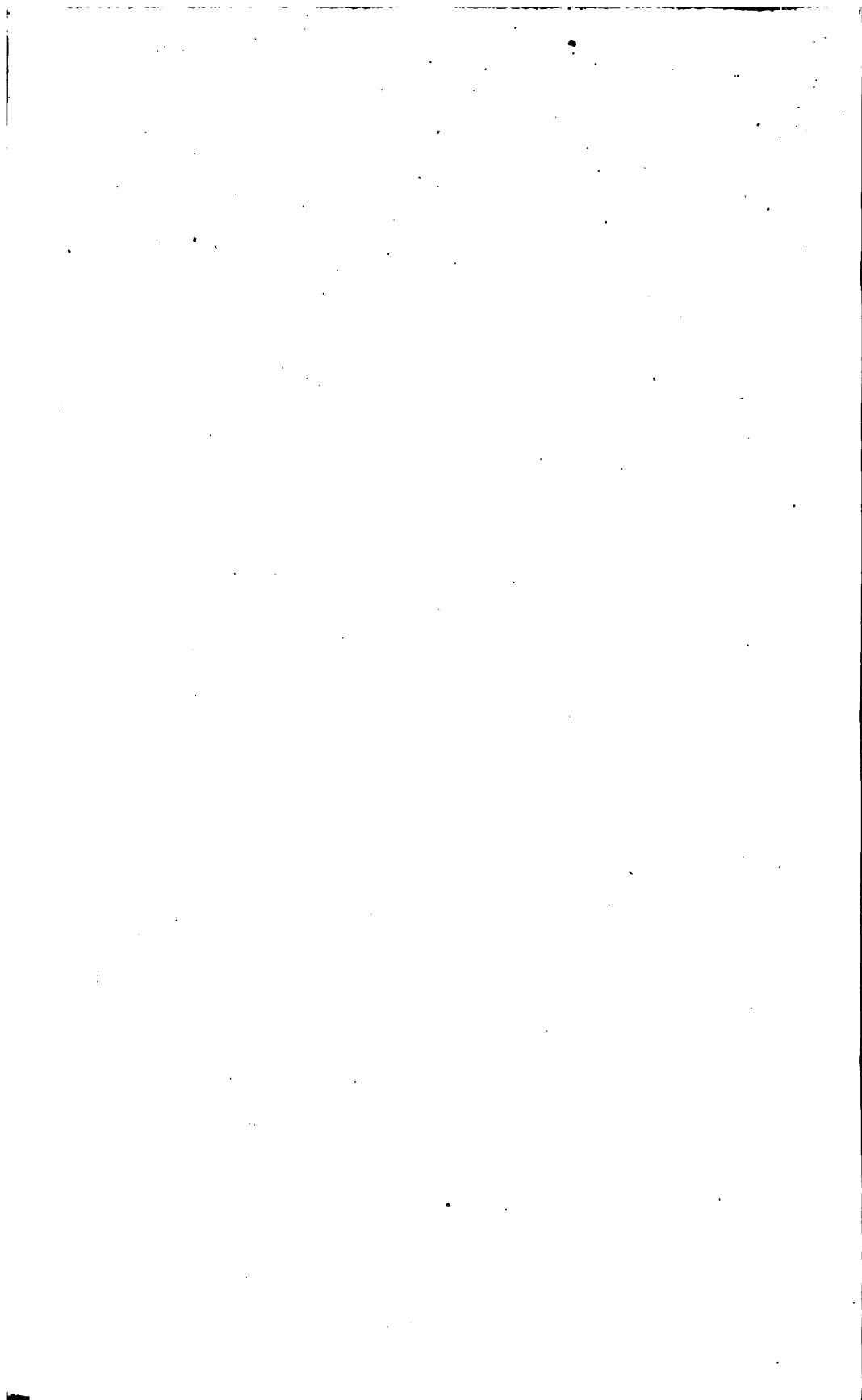
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FROM THE SMITHSONIAN REPORT FOR 1910, PAGES 113-123
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(PUBLICATION 2016)

WASHINGTON
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1911







MELVILLE WESTON FULLER. 1833-1910.

Chancellor of Smithsonian Institution, 1889-1910.

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MELVILLE WESTON FULLER—1833–1910.

[With 1 plate.]

By CHARLES D. WALCOTT,

Secretary of the Smithsonian Institution.

Melville Weston Fuller, doctor of laws, Chief Justice of the United States, chancellor of the Smithsonian Institution, was born at Augusta, Me., February 11, 1833, and died at his summer home, Sorrento, Me., on the morning of July 4, 1910. He became a statutory member of the establishment of the Smithsonian Institution, and also a member of the Board of Regents on October 8, 1888, by virtue of his appointment as the Chief Justice of the United States. He was elected chancellor of the Institution by the Board of Regents at its annual meeting January 9, 1889.

The chancellors who preceded Chief Justice Fuller were: Vice President George Miffin Dallas, 1846–1849; Vice President Millard Fillmore, 1849–1850; Chief Justice Roger Brooke Taney, 1850–1864; Chief Justice Samuel Portland Chase, 1864–1873; and Chief Justice Morrison Remick Waite, 1874–1888.

For 22 years, until his death in 1910, Chief Justice Fuller was most deeply interested in the general welfare of the Institution. He presided over the meetings of the Board of Regents most wisely and judiciously. With one exception, there was not a meeting of the regents during that entire period when he failed to be present.

The Regents of the Institution expressed their sorrow in the following words of tribute to his memory, adopted at the annual meeting of the board on December 8, 1910:

Whereas the Board of Regents of the Smithsonian Institution have received the sad intelligence of the death, on July 4, 1910, of Melville Weston Fuller, Chief Justice of the United States, and for twenty-two years chancellor of the Institution; therefore be it

Resolved, That we desire here to record our profound sorrow at the severing of the tie that has bound us to him for so long a period of honored service; that we feel keenly the loss of a wise presiding officer,

whose vast store of learning and gracious dignity have proved so invaluable in the deliberations of this board, and whose loyal interest in the Smithsonian Institution has been a source of inspiration to his colleagues.

Resolved, That we share in the grief of the nation at the passing away of one who was at once a distinguished leader of the greatest legal tribunal of our land, an eminent jurist, a patriotic citizen, a shining example of Christian gentleness, and who also possessed so charming a personality as a man and as a friend.

Resolved, That we respectfully tender to the members of the family of our late associate, our sincerest sympathy in their great bereavement.

Resolved, That an engrossed copy of these resolutions be transmitted to the family of the late chancellor.

An adequate review of the life of that eminent jurist would require more space than can be devoted to the subject in the present report of the board to Congress. Numerous eulogies in his memory have been delivered by members of the bar of the Supreme Court and by jurists throughout the land. It is fitting that selections from some of these tributes should here be recorded.

At a meeting of the bar of the Supreme Court and of its officers on December 10, 1910, Mr. Richard Olney, chairman of the meeting, and formerly an associate of Chief Justice Fuller on the Board of Regents of the Smithsonian Institution said:¹

"Gentlemen of the bar: The death of the Chief Justice of the United States is an event of the first importance. Undoubtedly it does not impress the general public as does the demise of a President in office. It does not elicit the same manifestations of general sorrow, it is not marked by the same profusion of funeral pageantry and funeral oratory. It is nevertheless an occurrence of much greater moment by reason both of the longer tenure of the Chief Justice's office and of the unique character of its functions. No single Presidency, probably no number of Presidencies combined, has ever influenced the destinies of this country so vitally and so largely as did the single Chief Justiceship of John Marshall. In adding Melville W. Fuller to the roll of the country's Chief Justices, therefore, one of our great Presidents exercised his highest prerogative and performed the act of his official life most far-reaching and enduring in its consequences. That President Cleveland's choice was fortunate has long been generally conceded. It put at the head of the national judiciary a well-educated scholar and a well-trained lawyer; a man who had won distinction at the bar on his merits and by his own efforts; who was not the lawyer of but one client or in but one field, but was expert in all varieties of professional work; who,

¹ The extracts herein are from "Proceedings of the bar and officers of the Supreme Court of the United States in memory of Melville Weston Fuller, December 10, 1910." Washington: 1911, pp. 1-108.

starting in the extreme northeastern corner of the Union where he indulged himself in such various activities as being president of the city council, city solicitor, and newspaper editor, soon took Horace Greeley's advice to young men, and three years after his admission to the bar established himself in the metropolis of the West; who from the beginning and as long as he remained at the bar took the good citizen's interest in politics, and thus put himself in touch with the currents of popular thought and sentiment; and who from the outset of his career was in thorough sympathy with the democratic principles which underlie our political institutions. Once inducted into his great office, he from the beginning acquitted himself so judiciously and ably and yet so modestly as both to increase the esteem of friends and to forestall the cavils of would-be critics. The limits of this occasion do not permit any adequate analysis of his merits as a judge or any satisfactory estimate of those labors on the Supreme Bench which occupied nearly 23 years of his life and are only partially shown in over 90 volumes of United States Supreme Court Reports. It is, however, only just and proper to say that, large and novel and momentous in their aspects and consequences as are many of the legal issues constantly presented to the Supreme Court of the United States, Chief Justice Fuller never failed to rise to the height of the occasion, and, whether as one of a minority or a majority of the court, to worthily deal with them. Many of his opinions are models of lucid statement, of exhaustive research, of close and conclusive reasoning. * * *

"Besides doing his share of the legal work of the Supreme Court, the Chief Justice is its executive and presiding officer. His qualities in both capacities have always received unstinted commendation. He was anxious to keep the docket moving, to prevent any congestion of the business of the court, and to avoid all delays in the disposition of causes not absolutely essential to the due administration of justice. That he accomplished those purposes with great success was due largely to his native tact and his invariable good temper. Over the public deliberations of the court he presided with a dignity and grace all his own. He was a patient and attentive listener and was content that counsel should have full opportunity to develop his case in his own way without interruption. He was specially considerate of the debutant, whether young or old, and many a first appearance at the bar of the court at Washington has been saved from wreck by the encouraging nod and smile of the Chief Justice. For those of us to whom the zest of life is largely in memories, few things can be more gratefully recalled than the spectacle of the Chief Justice sitting with his colleagues to listen to the opening of some newcomer, and by every word and tone and gesture expressing

the assurance that, whether his case or his presentation of it was good, bad, or indifferent, he had a well-wisher at the head of the court. It must not be understood that these occasions elicited anything unusual or exceptional in the bearing of the Chief Justice. On the contrary, the same considerate and gracious demeanor marked his entire administration of his duties as chief of his court. No one was snubbed, no one left the court with a right to feel that for some occult reason he was not *persona grata*. During his Chief Justiceship the court at Washington has been universally acclaimed as the most agreeable tribunal in the country to appear before. Members of the bar found there a forum in which the height of dignity was combined with the height of simplicity, in which ceremony did not degenerate into fussiness, and in which form was not exalted over substance. All can not fail to miss the central figure, in whom perfect kindliness of manner was joined to equal inflexibility in all essentials. They who knew him more intimately, and as the man as well as the magistrate, can not but grieve for the passing of a friend and comrade whose unique and personal charm mere words are inadequate to express. Fortunate in his life and in the opportunities of a great career clearly apprehended and worthily utilized, the Chief Justice was also fortunate in the circumstances of his death, which found him still in harness and still charged with the responsibilities of his great office. 'When,' says Lord Bacon, 'a man hath obtained worthy ends and expectations, the sweetest canticle is "*Nunc Dimittis*."'"

At the meeting referred to above the following resolutions were adopted:

Resolved, That the members of the bar of the Supreme Court desire to express their profound regret at the death of Melville Weston Fuller, eighth Chief Justice of the United States, and to record their high appreciation of his life and character and of his conspicuous and faithful service to his country.

Born in the State of Maine, he went to Chicago at the age of 23, when that great city was in its infancy, and there entered upon his long and distinguished professional career, which culminated in his elevation to the most exalted judicial station in our Government.

He secured the advantages of an academic and classical education at Bowdoin College, and always retained the habits and tastes of the student and scholar.

He was a man of the most extensive and varied reading in the profession, in governmental and political discussion and in general literature.

He rapidly achieved a commanding position at the then exceptionally brilliant bar of the city of his adoption, and for 32 years carried on an extended and diversified practice in the courts of his State; nor did he infrequently appear before the great tribunal over which he afterwards, and for 22 years, presided with such marked ability and distinction.

He was a man of singular beauty and purity of character.

While he was at the bar no one harbored a suspicion that the exigency of forensic controversy, in which he was almost constantly engaged, could ever tempt him to aught that was unfair or unworthy of the highest ideals of a noble and honorable profession.

As Chief Justice, it is enough to say that with conspicuous fidelity he fully and consistently maintained the best traditions of that high office. He took a deep interest in the efforts to secure peace between nations by international arbitration, and was appointed by our Government to membership in the permanent court established in 1899 by the first peace conference, and served in that capacity.

His character was marked by a gentle courtesy and consideration which constantly illuminated and attended upon the discharge of his important public duties, always marked his relations with the bar, and earned that popular confidence which goes out to him whom the people believe to be a merciful and considerate, as well as a just and impartial judge.

All this he was; and, endowed by nature with talents not inferior to those of his predecessors, possessed of attainments, training, and experience adequate to the exacting requirements of his great office, he filled it at all times in such a manner as to command the admiration and respect of the bar and the grateful appreciation of his countrymen.

On the morning of July 4 last, at his beautiful summer home, on the soil of the State in which he was born, and to which he remained always deeply attached, his long, useful, and honorable life ended; and when the sad announcement was made, we who had practiced in the great tribunal where he so long presided felt a deep sense of personal loss and personal bereavement that he had gone from us forever.

Resolved, also, That the Attorney General be asked to present these resolutions to the court and to request that they be inscribed upon its permanent records.

And that the chairman of this meeting be requested to transmit a copy of the resolutions to the family of the late Chief Justice and an expression of our sincere sympathy with them in the great and irreparable loss which they have sustained.

In seconding the resolutions Mr. Lee S. Overman said:

"The people of this country, Mr. Chairman, have the greatest respect for the law for its own sake, and there is no country in the world which honors and respects its great expounders and administrators more than does ours; and the reputation of a great and upright judge is one of the greatest inheritances of a free and happy people. Our country has been blessed with a Supreme Court whose able, just, and upright justices have added to her history a crown of glory and been to the Republic and its people a shield of protection.

"With untiring labor, with a broad grasp of the principles which underlie the structure of our Government, in the light of their genius they have traced back the principles of the law to their fountain springs, and then, running them forward to their logical conclusion, with their expansiveness and flexibility, they have so applied them to

the great problems arising continually under new conditions incident to our progress and higher civilization that our republican institutions and the affairs of the people have not suffered.

"Chief Justice Fuller was among the greatest of these great and illustrious lawyers and judges, and it is therefore most fitting that we should do honor to his memory and hold these appropriate exercises. By so doing we not only honor him, but we foster that spirit which always exists among a free people, and which tends to conserve our highest ideals and uphold our free institutions. Great men make great history, and love, veneration, and respect for them make a great people.

"The great Italian poet, speaking of the mighty presence which he met in that mystic realm of departed spirits, paid a great tribute to him when he said, 'His was a life so round and full that when it rolled out of time into eternity the world knew not how great a void was left until a generation has passed away.' This thought is applicable to him whom we meet to honor to-day.

"He was not a young man, dying in the fullness of his strength and power with unfilled possibilities. This is no place for sorrow. This man died after a full, well-rounded, completed life. He died when age was ripe, with the harness of his great official position yet upon him, and after maintaining the best traditions of his great office and of a great lawyer. Crowned with honor, ripe with age, respected by a great people, he leaned his white head beneath the soft touch of death—a death befitting such a life.

" 'Why weep ye, then, for him, who, having run
The bounds of man's appointed years, at last,
Life's blessings all enjoyed, life's labor done,
Serenely to his final rest has passed? ' "

Mr. Charles E. Littlefield, on the same occasion, said:

" * * * He came from a family of able preachers and lawyers. With Mr. Chief Justice Shaw, of Massachusetts, one of the greatest justices that ever sat on the Massachusetts bench, he had a common ancestor in Rev. Habijah Weld, called in his time 'a perfect Boanerges in the pulpit.' Rev. Habijah Weld was the fourth in a succession of four generations of preachers. Mr. Fuller's paternal and maternal grandfathers were both lawyers of note. Hon. Nathan Weston, his mother's father, was one of the first associate justices of the Maine supreme court and its chief justice for seven years, and a lawyer and judge of unusual ability. His father and mother each had a brother who was a lawyer. He graduated from Bowdoin College when 20 years of age, destined to become one of the most distinguished of an alumni which has a larger percentage of men of eminence and note than that of any other educational institution in the country. He had by inheritance an aptitude for the law. Ad-

mitted to the bar in Maine, desiring a wider field, in 1856 he went to Chicago, where, with gratifying success, he practiced his profession, attaining a high rank, until his appointment as Chief Justice of the Supreme Court of the United States, April 30, 1888. His practice was general, varied, and extensive, involving much important litigation. With great abilities, a ripe classical scholar, learned and profound in the law, diligent, industrious, conscientious, courageous, and patriotic, of the highest personal character, he brought to the discharge of the duties of the great office the abilities, qualities, and characteristics that enabled him to achieve his signal success. The dignity, urbanity, kindness, consideration, and gentle courtesy with which he presided over the deliberations of the Supreme Court of the United States endeared him not only to his associates on the bench but won for him the love and respect of a great profession. Of him it could be truthfully said, 'And they shall judge the people with just judgment. * * *'

Mr. George E. Price said:

* * * "No other court in the world is intrusted with such powers as this court. It deals not only with great questions of controversy arising between individual citizens of different States and between citizens of foreign countries and our own people, but to it is intrusted the ultimate interpretation of the laws and Constitution of the United States, with power to declare null and void not only acts of the legislatures of the different States, so far as they come in conflict with the Federal Constitution, but also the acts of Congress, the highest lawmaking power of the Federal Government. In addition to these great powers, this court is also given jurisdiction to settle controversies between the sovereign States of this Union, and in the past it has been called upon to settle controversies which involved the very autonomy of the States concerned, the integrity of their territory and their governmental jurisdiction and power. It is the first great instance of what is in effect modern international arbitration. In the settlement of these controversies between the States this court has no statute law to govern it and seldom any provision of any written constitution, but it is obliged to invoke and apply the eternal principles of an elevated and perfect justice, unfettered by technical subtleties and petty forms, the same fundamental doctrines of international law, which by the common consent of mankind are the basis of the intercourse of the civilized world. To its great credit it can be said that in these controversies between the States its judgments have always been acquiesced in and respected and carried out without question.

"Such are the powers of this great court over which the late Chief Justice presided for nearly a quarter of a century. To-day we,

the members of the bar of this court, are assembled to pay tribute to his memory, and all of us here assembled, as well as other members of the bar of this court from all sections of the country, those who have taken part in the great contests before it on the one side or the other, those whose interests or the interests of whose clients have been affected by its judgments, with one accord declare and bear testimony that he discharged the great duties of his position with becoming dignity, uniform courtesy, with signal ability and unquestioned fidelity and integrity; discharged these duties in such manner as to reflect great credit not only upon himself but upon the court and the Nation at large. Speaking for myself and, in some measure, for the bar of the State of West Virginia, I am here to unite with the other members in paying this just tribute to the memory of the late Chief Justice; and, having said this, there seems to be nothing more to say. I know of no way to pay greater honor to the memory of any man.

“Chief Justice Fuller met the responsibilities arising out of the great questions presented to this court in his day, and this is all that can be said of his predecessors in this great office. Marshall exercised a great influence in deciding the questions that arose during the constructive period of our Government. They were far-reaching questions, and the influence of his decisions is felt in the administration of the Government to this day. Chief Justice Taney, his successor, was confronted with the burning questions that arose in the great controversies preceding and during our terrible Civil War. Chase and Waite dealt with the important questions which arose out of the war—the reconstruction period, requiring the readjustment of many things which had been considered settled; the readjustment of the relations between the two sections which had been at war with each other, and the interpretation of the amendments to the Constitution which grew out of the war. And Chief Justice Fuller has been obliged to grapple with the great questions arising out of the stupendous industrial development which has taken place in the last quarter of a century—questions of interstate commerce and transportation, questions of great trusts and combinations of capital, questions of the mutual rights of capital and labor, questions relating to the regulation of railroads, besides the perplexing questions arising out of the development of this Nation into a world power since the Spanish War, involving our relations to our colonies acquired by reason of that war. No one can say that these questions are of any less importance than those which arose in any former period of the Government. He and his associates on this bench have met and disposed of many of these questions as they have arisen in such manner as to command the respect of the whole country and

to escape serious criticism. This is just what Marshall, Taney, Chase, and Waite, and their associates did with the great questions of their days; and so Chief Justice Fuller will stand forth in history as a worthy successor of the great Chief Justices who preceded him.

"The labors of the judge are along lines that make for peace—for the security of life, liberty, and property. It is his work to settle, in a peaceable manner, controversies that would otherwise result in the triumph of fraud, violence, and oppression and lead to war. The judge is essentially a peacemaker, and when we reflect that Chief Justice Fuller devoted 22 years of his life to this work may we not with propriety apply to him the beautiful beatitude which fell from the lips of Him who is the Judge of all the earth, in His sermon on the mount: 'Blessed are the peacemakers, for they shall be called the children of God'?"

The Supreme Court, on January 9, 1911, adopted resolutions identical with those adopted by the bar of that court on December 10, 1910. On that occasion the Attorney General of the United States, Mr. Wickersham, in presenting the resolutions, reviewed the more important decisions of the court under Chief Justice Fuller, and in conclusion said:

" * * * The Talmud compares the study of the law to a huge heap of dust that is to be cleared away. 'The foolish man says, "It is impossible that I should be able to remove this immense heap. I will not attempt it." But the wise man says, "I will remove a little to-day, some more to-morrow, and more the day after, and thus in time I shall have removed it all."' It was in this spirit that Chief Justice Fuller toiled during the years that he presided over this court. Much of the work of all courts is of but transitory importance, save in so far as it keeps ever burning the sacred lamp of justice to lighten the footsteps of men. But the labors of this tribunal are essential to the preservation of the liberties of a free people. In the largest proportion of causes submitted to its judgment every decision becomes a page of history and may become a part of a rampart against anarchy. To this court men look for the maintenance of those rights which our forefathers wrung from a reluctant monarch at Runnymede 800 years ago, which are now embodied in the Constitution of the United States, and which are as essential to the protection of the citizen against the tyranny of a hydra-headed tyrant of the future as they were against the monarchs of the past.

"The labors of the eighth Chief Justice are over, and his work in this court is submitted to the judgment of men. As he said of Justice Brewer, 'he died suddenly, but not the unprepared death from which we pray to be delivered,' and having finished his course in faith he doth now rest from his labors."

Chief Justice White, in responding to the words of the Attorney General, said:

"Mr. Attorney General: The resolutions which you present are consoling, since they show how poignantly our brethren of the bar share with us the sorrow caused by the death of our cherished and venerated Chief Justice. When the shadow which the bereavement resulting from his loss casts upon the path of duty which lies before us is considered, the resolutions are additionally consoling, since they strengthen our conviction that, whatever may be our infirmities, we may always rely upon the generous judgment of our brethren of the bar if only we bring to the discharge of our duties the singleness of purpose which ever characterized the judicial labors of our late Chief Justice.

"Those labors find an enduring memorial in the reported decisions of the court rendered during the long period of his service. Their potency, whether in enforcing and protecting individual right or in perpetuating representative government by upholding our constitutional institutions, has passed beyond the influence of praise or blame. They have become the heritage of his countrymen, for whose good he labored with untiring devotion.

"The darkness of the valley of the shadow of death yet so obscures vision as to render it impossible for me to attempt now to fix the result of the labors of the Chief Justice or to define with accuracy the scope of the blessings to his countrymen and to mankind which have arisen from his work. I therefore do not attempt to supplement the brief statement on that subject which you, Mr. Attorney General, have so eloquently made. So, also, I shall forbear to comment upon the wide attainments of the late Chief Justice, his engaging literary fancy, his great familiarity with precedents, and his grasp of fundamental principles. I leave these special attributes, as well as the wider considerations which would be required to be taken into view in order to symmetrically analyze the judicial work of the late Chief Justice, not only because some other occasion would be more appropriate and some more masterful hand than mine be required to do justice to those subjects, but also because my purpose now is only briefly to refer to some of the more endearing and admirable personal traits of the Chief Justice which were manifested to those associated with him in judicial labor, and at the same time to mark the attributes from which those traits were derived and sustained.

"Briefly, those qualities were his untiring attention to his judicial duties and the dedication which he made to the efficient and wise performance of those duties of every intellectual and moral power which he possessed; his love of justice for justice's sake; his kindness, his gentleness, associated, however, with a courage which gave him always the power fearlessly to do what he thought was right, without

fear or favor. The source whence these endearing and noble qualities were derived was not far to seek. It was faith in the power of good over evil; faith in the capacity of his fellow men for self-government; faith in the wisdom of the fathers of our institutions; faith, unshaken faith, in the efficiency of the system of constitutional government which they established and its adequacy to protect the rights and liberties of the people. And, above all, there was an abounding faith in Divine Providence, the faith of a Christian, which dominated his being and welded all his faculties into a harmonious whole, causing his nature to be resonant with the melody of hope and charity, which made him what he was—a simple, kindly, generous, true, brave, and devoted public servant, treading with unswerving step the path of duty, until the tender voice of the All-Wise and Merciful Father called him from labor to rest, from solicitude to peace, and to his exceeding and enduring reward. ia

“Mr. Attorney General, the resolutions of our brethren of the bar will be made a part of the records of the court. In making this order the thought comes unbidden to the mind that if there be in the future, by either the bench or the bar, a failure to discharge duty because of the want of an honest effort to do so, the resolutions will become the test of our moral insufficiency and be a relentless instrument for our condemnation. But the shadow created by these misgivings is at once dispelled by our conviction that although the Chief Justice has gone before, yet doth he abide with us by his precept and example, which I can not refrain from hoping will be a spiritual beacon leading both bench and bar to a perfect dedication of all their powers to the complete discharge of their whole duty. Ah! In the luminosity afforded by that example and precept, and with the benign vision given by that faith which is the proof of things unseen, may the hope not be indulged in that the result of such a consecration to duty will enable us to behold a continued righteous administration of justice, a preservation of our constitutional government, the fructification of all the activities of our vast country for the benefit of the whole people, the abiding of tranquility and happiness in all the homes of all our land, and the continued enjoyment by all our countrymen of individual liberty restrained from license and safeguarded from oppression.”

Other touching tributes to Chief Justice Fuller might be cited. They all portray an earnest, efficient jurist, a man true to the wise principles that guide the daily life of an upright American citizen who holds the exalted position of Chief Justice of the United States.

